

JESUS CARRASCO,
Plaintiff

V.

STATE FARM INSURANCE,
Defendant.

Case No. 18-cv-06509-BLF

**ORDER DISMISSING ACTION
WITHOUT PREJUDICE FOR
FAILURE TO COMPLY WITH A
COURT ORDER**

[Re: ECF 14]

On October 24, 2018, Defendant State Farm Insurance removed this case from Santa Clara County Superior Court. ECF 1. On October 31, 2018, Defendant moved to dismiss the action. Plaintiff Jesus Carrasco did not file an opposition. On January 8, 2019, the Court granted Defendant’s motion to dismiss with leave to amend because Plaintiff had failed to allege that he complied with the statutory requirements for bringing his claims. ECF 14. The Court cautioned in its order that “[f]ailure to meet the deadline to file an amended complaint or failure to cure the deficiencies identified in this Order will result in dismissal of Carrasco’s claims with prejudice.” *Id.* The Court set a deadline for the amended complaint of January 28, 2019. To date, no amended complaint has been filed.

The Court has considered the five factors for determining whether to dismiss a case as a sanction: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives.” *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (citation omitted). Each of these factors except the policy in favor of resolution of cases on the merits weighs in favor of dismissal without prejudice. Though the Court warned Plaintiff that the case would be dismissed with prejudice for

1 failure to timely amend, the Court is concerned that Plaintiff's attorney may not be actively
2 engaging in the case. Although the attorney is receiving ECF notices and the Court mailed to his
3 work address the order granting the motion to dismiss, the attorney does not appear to be a
4 member of the Northern District of California Bar. Because Plaintiff's attorney may be the reason
5 for the failure to respond, as opposed to Plaintiff himself, and because Plaintiff may still have a
6 valid claim against Defendant, the Court DISMISSES WITHOUT PREJUDICE Plaintiff's claims.

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IT IS SO ORDERED.

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Dated: January 31, 2019

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BETH LABSON FREEMAN
United States District Judge